Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-5058

DAVID LEVELL W., a minor,
Petitioner,
v.
THE STATE OF CALIFORNIA,
Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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On July 14, 1980, petitioner filed his Petition for Writ of Certiorari and Motion for Leave to Proceed in Forma Pauperis. That petition and motion are still pending before this Honorable Court.

Petitioner has on this date received a typeset copy of a law review article, that discusses the lower court's decision in his case, and will be published in the Criminal Justice Journal within the next several weeks. The article is entitled IN RE DAVID W.: A DEPARTURE FROM SCOTT K. IS ORDERED NOT PUBLISHED, and will be cited as 4 Crim. Just. J. _____ (1980). The article is attached as Appendix A of this supplemental brief. The petitioner requests that the Court consider this new material that

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was not available at the time that his petition was filed. (Rules of the Supreme Court, rule 22.6.)

DATED: November 12, 1980

Respectfully submitted,

QUIN DENVIR
State Public Defender

By _____
STEFFAN IMHOFF
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Attorneys for Petitioner

APPENDIX

AUTHOR'S CORRECTIONS

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IN RE DAVID W.: A DEPARTURE FROM *SCOTT K.* IS ORDERED NOT PUBLISHED

I. INTRODUCTION

The California Second District Court of Appeal recently addressed the issue of a parent's authority to curtail the constitutional rights of a minor child in the decision of *In re David W.*[1] It was argued that the minor's Fourth and Fourteenth Amendment rights had been violated when police officers, without probable cause, seized the minor and transported him to the police station for interrogation.[2] The court considered the rights of the minor and determined that no constitutional violation occurred when the parent had consented to the arrest on behalf of the child, recognizing a parent's " 'responsibility and authority for the discipline, training and control of his children.' "[3] In an unusual move, the California Supreme Court directed the Reporter of Decisions not to publish the opinion of the lower court.

II. BACKGROUND

A. *Constitutional Rights of Minors*

At common law children under seven were presumed to lack capacity "to form the requisite criminal intent."[4] Further, according to the equitable concept of *parens patriae*, children were assumed to be "wards of the state in need of special protection."[5] These two doctrines form the basis of the juvenile court philosophy.[6]

Since the juvenile justice system was originally conceived as a civil proceeding with an objective of rehabilitating and guiding wayward children, the constitutional guarantees for criminal pro-

1. In re David W., 103 Cal. App. 3d 469, 163 Cal. Rptr. 87 (1980), *reh. denied* (May 14, 1980) (reporter of decisions directed not to publish the opinion in the official reports July 18, 1980, by the California Supreme Court).

2. Appellant's Opening Brief to the First Appellate Court, submitted on October 15, 1979, to the California Second District Court of Appeals, at 5. Courtesy of Steffan Imhoff, Office of the State Public Defender, Los Angeles.

3. *Supra* note 1, at 475, 163 Cal. Rptr. at 91 (quoting Vandenberg v. Superior Court of Los Angeles County, 8 Cal. App. 3d 1048, 1055, 87 Cal. Rptr. 876, 880 (1970)).

4. C.E.B., California Juvenile Court Practice at 18 (1968).

5. *Id.*

6. *Id.*

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ceedings were considered inapplicable. However, in 1967 in *In re Gault*,[7] the United States Supreme Court recognized certain rights of minors as fundamental in juvenile court proceedings. Gault, 15 years old, was taken into custody on a charge of making indecent phone calls.[8] In the Arizona Juvenile Court proceeding adequate notice of the charges was not provided, the charges were not explained to the parents, representation by counsel was not provided, and no transcript of the proceedings was made.[9] Gault was adjudicated a delinquent on the basis of an alleged admission of guilt.[10] The judge thereupon committed Gault to the state reformatory for the period of his minority, thus giving him a six-year sentence for a misdemeanor offense for which the Code provided a fine of $5 to $50 or not more than two months' imprisonment.[11]

In a sweeping decision, the United States Supreme Court held that the requirements of due process must be observed in the juvenile court. The notion that the state appears as *parens patriae*, and that the proceedings deal with custody and are civil in nature, ignores the reality that the minor is being deprived of his liberty and confined in an institution.[12] Accordingly, the Court ruled that juvenile court proceedings must include the following due process requirements: (1) the minor must be provided with written notice of the specific charge or factual allegations;[13] (2) the minor and his or her parents must be notified of the minor's right to be represented by counsel;[14] (3) the minor must be informed of the privilege against self-incrimination;[15] and (4) the minor must be provided with the right to confront and cross-examine witnesses.[16]

Separate opinions of three justices took sharp issue with some of the conclusions of the majority. In a concurring opinion, Justice Black declared that the holding "strikes a well-nigh fatal blow to much that is unique about the juvenile courts in the Nation."[17] Justice Stewart, in his dissent, insisted that "the Court's decision [was] wholly unsound as a matter of constitutional law, and sadly

7. In re Gault, 387 U.S. 1 (1967).
8. *Id.* at 4-5.
9. *Id.* at 5.
10. *Id.* at 7-8.
11. *Id.* at 8-9.
12. *Id.* at 27.
13. *Id.* at 33.
14. *Id.* at 41.
15. *Id.* at 55.
16. *Id.* at 57.
17. *Id.* at 60.

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unwise as a matter of judicial policy."[18] He contended that the inflexible restrictions of adversary criminal trials have no place in juvenile courts, and that the due process requirements imposed on juvenile court proceedings by the majority opinion represented a step backward into the 19th Century. Justice Stewart stated that "a juvenile proceeding's whole purpose and mission is the very opposite of the mission and purpose of a prosecution in a criminal court. The object of the one is correction of a condition. The object of the other is conviction and punishment for a criminal act."[19]

In 1968, the California Second District Court of Appeal addressed the issue of which due process rights must be provided for minors charged with criminal offenses. In *In re M.G.S.*,[20] the minor had been declared a ward of the court because he was found to have committed robbery; he was committed to the California Youth Authority.[21] He contended on appeal that he had been deprived of his constitutional right to effective aid of counsel.[22]

In reversing the trial court's finding, the appellate court held that due process of law is a prerequisite to the constitutional validity of juvenile court proceedings "in which alleged misconduct may result in a determination of delinquency and commitment to a state institution."[23] The court further stated that it could not be seriously contended that the constitutional guarantee of due process of law does not extend to minors as well as to adults, reasoning: "'Surely, a minor charged in the juvenile courts with acts denounced by law as a felony does not have lesser constitutional, statutory rights or guarantees than are afforded an adult under similar circumstances in the superior court.'"[24] Thus, it would appear that when juveniles are charged with having committed criminal acts, they should be provided with the same constitutional and statutory protections as adults. However, as will be seen, the courts have never held that the rights of minors are coextensive with those of adults, even in the context of criminal charges. Currently, due process for minors charged with having

18. *Id.* at 78.
19. *Id.* at 79.
20. In re M.G.S., 267 Cal. App. 2d 329, 72 Cal. Rptr. 808 (1968).
21. *Id.* at 334-35, 72 Cal. Rptr. at 811.
22. *Id.* at 331, 72 Cal. Rptr. at 808.
23. *Id.* at 335-36, 72 Cal. Rptr. at 811.
24. *Id.* at 338-39, 72 Cal. Rptr. at 813 [quoting In re Contreras, 109 Cal. App. 2d 787, 790, 241 P.2d 631, 633 (1972)].

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committed criminal offenses requires the right to notice of charges, the right to counsel, the right to a speedy trial, and the right to confront and cross-examine witnesses—those rights mandated by the *Gault* decision. However, California, as well as many other jurisdictions, does not provide minors with the right to bail and the right to a jury trial.[25]

B. *Waiver of Constitutional Rights by Minor's Parents*

Once it is established that minors must be provided with many of the due process protections guaranteed to adults, a further question arises regarding which of these constitutional protections may be waived by the minor or his or her parents.

The courts have consistently held that minors may waive their own constitutional rights if the waiver is knowingly and intelligently made. The California Supreme Court in 1967 enunciated the "totallity of the circumstances" test for determining whether a minor's waiver of constitutional rights is valid. The court stated that the admissibility of a voluntary confession made by a minor "depends not on his age alone but on a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement."[26]

In addressing the issue of waiver of constitutional rights by minors, the California Third District Court of Appeal in *In re Robert H.*,[27] again enunciated the "totality of the circumstances" test. However, in the absence of a valid waiver, the court held that "minors may exercise their due process rights independently of, and indeed in opposition to, their parents."[28]

The issue of which constitutional and statutory rights of a minor may be waived by his or her parents was discussed by the California Supreme Court in 1977 in *In re Roger S.*[29] Roger was committed to a state mental hospital on application of his mother. Had Roger been an adult, procedural due process required in the

25. 6 WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent and Child* §§ 309, 310 (8th ed. 1974).

26. People v. Lara, 67 Cal. 2d 365, 383, 434 P.2d 202, 215, 62 Cal. Rptr. 586, 599 (1967).

27. In re Robert H., 78 Cal. App. 3d 894, 144 Cal. Rptr. 565 (1978).

28. *Id.* at 898, 144 Cal. Rptr. at 547.

29. In re Roger S., 19 Cal. 3d 921, 569 P.2d 1286, 141 Cal. Rptr. 298 (1977).

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Lanterman-Petris-Short Act (LPS)[30] would have required medical certification and a pre-petition finding that there was probable cause to believe the allegations of his mother. If the judge concurred with the findings, an evaluation would have been ordered to take place at a location convenient for Roger, at which physicians, attorneys and friends could have been present.[31] However, in Roger's case, the procedural protections provided under the LPS Act were not complied with; instead his mother applied for his commitment pursuant to the provisions of California Welfare and Institutions Code section 6000 (b) which provides for voluntary commitment of minors by their parents.[32] Roger appealed his commitment arguing that Section 6000 (b) did not afford procedural due process to minors because it permitted parents to "voluntarily" commit their children. He further argued that this procedure for commitment of minors denied such minors equal protection of the laws because it permitted their admission even though they were neither "gravely disabled" nor dangerous to themselves or others—findings which must necessarily be made before adults could be involuntarily committed.[33] The California Supreme Court noted that the United States Supreme Court had

30. CAL. WELF. & INST. CODE §§ 5000, et seq. (West 1972).

31. CAL. WELF. & INST. CODE § 5206 (West 1972) provides:

> Whenever it appears, by petition pursuant to this article, to the satisfaction of a judge of a superior court that a person is, as a result of mental disorder, a danger to others, or to himself, or gravely disabled, and the person has refused or failed to accept evaluation voluntarily, the judge shall issue an order notifying the person to submit to an evaluation at such time and place as designated by the judge. The order for an evaluation shall be served as provided in Section 5208 by a peace officer, counselor in mental health, or a court-appointed official. The person shall be permitted to remain in his home or other place of his choosing prior to the time of evaluation, and shall be permitted to be accompanied by one or more of his relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. If the person to receive evaluation so requests, the individual or individuals who accompany him may be present during the evaluation.

32. CAL. WELF. & INST. CODE § 6000 (West Supp. 1980) provides:

> [T]he medical director of a state hospital for the mentally disordered or developmentally disabled may receive in such hospital, as a boarder and patient, any person who is a suitable person for care and treatment in such hospital, upon receipt of a written application for the admission of the person into the hospital for care and treatment made in accordance with the following requirements:
>
> . . . .
>
> (b) In the case of a minor person, the application shall be made by his parents, or by a parent, guardian or other person entitled to his custody to any of such mental hospitals as may be designated by the Director of Developmental Services to admit minors on voluntary applications.

33. CAL. WELF. & INST. CODE § 5200 (West 1972) provides for the involuntary

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recently "reaffirmed the right of minors to constitutional rights and protection"[34] when it stated: "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights."[35] On this basis, the *Roger S.* court concluded that "no interest of the state or of a parent sufficiently outweighs the liberty interest of a minor old enough to independently exercise his right to due process to permit the parent to deprive him of that right."[36] Thus, it was held that a parent could not waive a minor's right to procedural due process.

Dissenting to the majority opinion in *Roger S.*, Justice Clark argued against the expansion of procedural due process, stating that he did not believe that due process requires trial-type procedures. Rather, he was "convinced that the present system for commitment of minors could with very little modification meet appropriate standards."[37]

In *Vanderberg v. Superior Court of Los Angeles County*,[38] a father consented to a warrentless search of a bedroom jointly used by the father and his adult son. The son's motion to suppress was denied and the evidence discovered was admitted at the trial.

In affirming the father's right to consent to the search, the California Court of Appeal for the Second District found that "[i]n his capacity as the head of household, a father has the responsibility and authority for the discipline, training and control of his children."[39] In addition, the court concluded that "permitting an officer to search a bedroom in order to determine if his son is trafficking in narcotics . . . [appeared] a reasonable and necessary extension of a father's authority and control over his children's moral training, health and personal hygiene."[40] However, it would appear the decision could have been more firmly

commitment of "Any person alleged as a result of mental disorder, to be a danger to others, or to himself, or to be gravely disabled."

34. *Supra* note 29, at 927, 569 P.2d at 1290, 141 Cal. Rptr. at 302.

35. *Id.* [quoting Planned Parenthood of Missouri v. Danforth, 428 U.S. 52, 74 (1976)].

36. *Id.* at 931, 569 P.2d at 1292, 141 Cal. Rptr. at 304.

37. *Id.* at 941, 569 P.2d at 1299, 141 Cal. Rptr. at 311.

38. Vandenberg v. Superior Court of Los Angeles County, *supra* note 3, at 1048, 87 Cal. Rptr. at 876.

39. *Id.* at 1055, 87 Cal. Rptr. at 880.

40. *Id.*

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grounded on the fact that the father and son shared the bedroom and, therefore, the father could consent to the search because it was his own bedroom.

C. *The Supreme Court Sets the Stage with Scott K.*

In 1979, the California Supreme Court took the opportunity to decide a similar issue to that raised in the *Vandenberg* decision. In *In re Scott K.*,[41] the court confronted the issue of parental consent to search a minor's room and its contents. Scott's father consented to the search of Scott's bedroom and a toolbox located therein.[42] The Supreme Court found that because the police knew that the father claimed no interest in the toolbox or its contents and acknowledged that the son was the owner, there was no justification for the police to rely on the father's consent to conduct the search or for their failure to seek the search warrant required by law.[43]

The Supreme Court acknowledged that the rights of juveniles are not identical in scope to the rights of adults and may be abridged when the curtailment serves the state's interest in the welfare of children.[44] However, the court further found:

> Search and seizure laws, however, hardly seem disruptive or otherwise inconsistent with the state's interest in child welfare. . . . [M]inors have a liberty interest that entitles them to due process whenever a state initiates action to deprive them of liberty. . . . Enforcement of search and seizure protection helps ensure that the factfinding process conforms with standards of due process.[45]

Recognition of the inherent right of parents to discipline and control their minor children was emphasized in the dissenting opinions in *Scott K.* Justice Clark's dissent insisted that when Scott's parents consented to the search of the toolbox, they were merely discharging their parental responsibilities. He felt the actions of Scott's parents did not violate Scott's constitutional right to be free from unreasonable searches and seizures. Further, the right of Scott's parents to discipline their child is also a constitutionally protected right which Justice Clark felt was violated by

41. In re Scott K., 24 Cal. 3d 395, 595 P.2d 105, 155 Cal. Rptr. 671 (1979).
42. *Id.* at 399, 595 P.2d at 107, 155 Cal. Rptr. at 673.
43. *Id.* at 405, 595 P.2d at 111, 155 Cal. Rptr. at 677.
44. *Id.* at 401, 595 P.2d at 108, 155 Cal. Rptr. at 674.
45. *Id.* at 402, 595 P.2d at 108-09, 155 Cal. Rptr. at 674-75.

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the majority's opinion.[46]

Although Justice Clark acknowledged that both juveniles and adults possess the right to be free from unreasonable searches and seizures, he felt that the rights of juveniles are not as extensive as those of adults and insisted that "parents have powers greater than those of the state to curtail a child's exercise of the constitutional right[] e may otherwise enjoy, for a parent's own constitutionally protected liberty interest includes the right to 'bring up children.' "[47] Justice Clark observed that Scott's parents "did not jeopardize [his] health or safety, nor did their actions 'have a potential for significant social burdens.' "[48] To the contrary, he felt that "the majority's decision [would] very likely have such deleterious effects by diminishing the authority of parents to discipline and control their children."[49]

Justice Richardson also dissented to the majority opinion in *Scott K.* It was his view that parents "have both the right and the responsibility to preserve the lawful nature of activities in their home."[50] It is their obligation to "control and eliminate any criminal activity in the home."[51] Justice Richardson further acknowledged that "parent have a legitimate purpose in seeking to ferret out the existence of any criminal activity conducted in any part of their home."[52] Their responsibility to themselves, and to the family, require that they do so. "Parents in certain situations have a right to be suspicious, and to act reasonably in accordance with those suspicions. They do not help their children if they do otherwise."[53]

Thus, although there were strong dissents, the California Supreme Court had ruled that minors were entitled to the full panoply of Fourth Amendment protections with regard to unreasonable searches and seizures. However, it was not clear when and under what circumstances parents may waive other constitutional rights of their children. It was against this background that

46. *Id.* at 405, 595 P.2d at 111, 155 Cal. Rptr. at 677.
47. *Id.* at 406, 595 P.2d at 111, 155 Cal. Rptr. at 677.
48. *Id.* at 406, 595 P.2d at 111, 155 Cal. Rptr. at 677 [quoting Wisconsin v. Yoder, 406 U.S. 205, 234 (1972)].
49. *Supra* note 41, at 406, 595 P.2d at 111, 155 Cal. Rptr. at 677.
50. *Id.* at 408, 595 P.2d at 113, 155 Cal. Rptr. at 679.
51. *Id.*
52. *Id.*
53. *Id.* at 409, 595 P.2d at 113, 155 Cal. Rptr. at 679.

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the case of *In re David W.*[54] arose.

III. FACTS IN *DAVID W.*

David W., age 13, had been previously charged with grand theft in a petition to the juvenile court under Welfare and Institutions Code section 602.[55] The juvenile court made a true finding and adjudged David a ward of the court. At the dispositional hearing,[56] David was placed at home on the condition that he comply with the conditions of probation. Thereafter, David's mother, suspecting that he had been involved in a burglary, contacted the local police station and informed them of her suspicions and stated that she was going to bring David to the station. When she failed to do so, two police officers were dispatched to go to the woman's home and inquire as to when she would be bringing her son in. The uniformed officers arrived at the residence at approximately 8:00 a.m. A young boy, age 10 to 12, answered the door and requested that they wait while he notified his mother of their presence. The boy returned and said, "My mother wants you to come in."[57] He directed them to a bedroom where the mother was lying in bed. The officers asked why she had not brought David to the station the day before, and she explained that she was having car trouble. When asked if she could bring him in to the station that day, she informed them that the car was still not working and stated, "Well, you officers are here. You can take him down."[58]

The mother then told David, who was in bed in the same room, to get out of bed and to get dressed because the officers were waiting for him. David complied. When he was dressed, he left with the police officers who, prior to placing David in the police car, handcuffed him to prevent him from jumping out of the vehicle while en route.[59]

At the station, the police officers advised David of his *Mi-*

54. *Supra* note 1.

55. CAL. WELF. & INST. CODE § 602 (West Supp. 1980) provides:

> Any person who is under age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

56. The disposition in a juvenile court proceeding is analogous to the sentence in a criminal court proceeding.

57. *Supra* note 1, at 472, 163 Cal. Rptr. at 89.

58. *Id.*

59. *Id.* at 473, 163 Cal. Rptr. at 90.

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randa rights. He waived his rights and confessed to the burglary. Based on the true finding of burglary of the second degree, the court set the maximum period of physical confinement at two years.[60]

IV. COURT OF APPEALS DECISION

On appeal, David contended that the forceable seizure of his body amounted to an illegal arrest since the police had neither probable cause nor his consent to arrest him. Consequently, his confession, as the fruit of the illegal arrest, should be suppressed.[61] The California Second District Court of Appeal rejected this contention, stating that no constitutional violation occurred when David and the police officers complied with the mother's request that he be taken to the station for investigation. Therefore, the trial court had properly denied the motion to suppress the minor's confession. The appellate court further stated that "under ordinary circumstances, absent the consent of a suspect, his transportation to the police station for investigation is tantamount to an arrest, thus calling into play the Fourth Amendment safeguards."[62] However, they concluded that David's lack of consent to the arrest was not at-issue because the officers had complied with the mother's request and David had "obeyed his mother, without protest."[63]

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause. . . ."[64] In *Terry v. Ohio*,[65] the United States Supreme Court enunciated the test for determining whether a person has been "seized" for Fourth Amendment purposes: "It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."[66] Even though David was not told he was under arrest, the fact that the police officers handcuffed him for

60. Appellant's Petition for Hearing, submitted on April 24, 1980, to the California Supreme Court, at 6. Courtesy of Steffan Imhoff, Office of the State Public Defender, Los Angeles.
61. Wong Sun v. United States, 371 U.S. 471 (1963).
62. *Supra* note 1, at 473, 163 Cal. Rptr. at 90.
63. *Id.*
64. U.S. CONST. amend. IV.
65. Terry v. Ohio, 392 U.S. 1 (1968).
66. *Id.* at 16.

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transportation to the station establishes a seizure for Fourth Amendment purposes when applying the test set forth in *Terry*. However, the majority in *David W.* found no violation of David's Fourth Amendment rights. The court felt that the police officers' actions were justified since they had made no demand of the minor requiring consent.[67] They testified that their purpose in visiting David's home was merely to ask his mother when she was going to bring David to the police station as she had stated she would do. They did not plan to question David. David's mother requested that the officers take David to the police station for interrogation. Nothing in the record indicated that the officers had suggested taking David to the police station or that they intended to do so prior to the mother's request.[68]

David argued that his Fourth Amendment rights could not be waived by his mother, relying on the recent holding of the California Supreme Court in *Scott K.*,[69] in which the court found that parents may not summarily waive their child's right to search and seizure protection.[70] However, the appellate court attempted to distinguish *Scott K.* by saying it was a narrow holding based upon the minor's proprietary interest in property. The court rejected David's contention that the *Scott K.* decision overruled sub silentio cases such as *Vandenberg* which recognized a parent's " 'responsiblity and authority for the discipline, training and control of his children.' "[71]

Although the court found that David had been "seized" when he was taken to the police station, they insisted that "the facts of this case are unusual, and our inquiry does not involve standard issues of consent or waiver of Fourth Amendment rights."[72] Rather, the court felt judicial deference to the "supervisorial authority and control of parents over their children"[73] was dispositive of the case. Thus, the appellate court reaffirmed its desire to recognize and acknowledge the supervisorial authority and control of parents of their children at the cost of a minor's constitutional rights.

67. *Supra* note 1, at 473, 163 Cal. Rptr. at 90.
68. *Id.*
69. *Supra* note 41.
70. *Id.* at 404, 595 P.2d at 110, 155 Cal. Rptr. at 676.
71. Supra note 1, at 475, 163 Cal. Rptr. at 91 (quoting Vandenberg v. Superior Court of Los Angeles County, *supra* note 3).
72. *Id.* at 473, 163 Cal. Rptr. at 90.
73. *Id.* at 474, 163 Cal. Rptr. at 91.

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Judge Jefferson dissented. He considered the majority's holding to be contrary to the current trend in the law which recognized that minors have some fundamental constitutional rights which cannot be waived by parents.[74] Among these rights is the right to procedural due process. He cited the United States Supreme Court for the proposition that " '[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.' "[75]

Judge Jefferson recognized the principle set forth in *Scott K.* that "'[b]y no means are the rights of juveniles coextensive with those of adults. . . . Minors' rights are often legitimately curtailed when the restriction serves a state's interest in promoting the health and growth of children.' "[76] He insisted that the California Supreme Court decision in *Scott K.* mandated a decision that David's Fourth Amendments rights had been violated; therefore, the fruits of this illegal arrest—David's confession—should be suppressed.

V. SUBSEQUENT COURT ACTION

On May 14, 1980, David's petition for hearing before the California Supreme Court was denied. Justices Tobriner and Newman were of the opinion that the petition should be granted. On July 18, 1980, the California Supreme Court directed the Reporter of Decisions not to publish the opinion in the official reports.[77] It would appear that even though the court denied hearing, it was not in agreement with the ruling in *David W.*

VI. IMPACT

The modern trend in the California courts is to recognize that minors have constitutional rights which parallel those accorded adults. However, this trend has caused conflicts due to the desire to retain the basic non-adversarial nature of juvenile court pro-

74. *Id.* at 479, 163 Cal. Rptr. at 94.

75. *Id.* at 479, 163 Cal. Rptr. at 94 (quoting Planned Parenthood of Missouri v. Danforth, *supra* note 35).

76. *Id.* at 480, 163 Cal. Rptr. at 94 (quoting In re Scott K., *supra* note 41, at 401, 595 P.2d at 108, 155 Cal. Rptr. at 674.

77. A Writ of Certiorari was pending before the United States Supreme Court at the time this article went to press.

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ceedings and to recognize the fundamental parental right to discipline and control their minor children.

The California Supreme Court in *Scott K.* recognized that Fourth Amendment rights regarding searches and seizures may not be waived by parents. The court insisted that "minors have a liberty interest that entitles them to due process whenever a state initiates action to deprive them of liberty."[78] However, in David's case, the Second District Court of Appeal recognized as valid a waiver, by his mother, of his right to a lawful arrest. It appears that the court based its opinion upon the reasonableness of the police officers' actions. David had been in trouble before and his mother was concerned about him. The police officers were merely complying with the mother's request. However, this somewhat simplistic analysis seems to fly in the face of well-established Fourth Amendment requirements that arrests must be based on probable cause and the recent United States Supreme Court decision that a person may not be arrested in his home absent consent, a warrant, or probable cause plus exigent circumstances.[79] In David's case, there was no warrant; nor was there probable cause or exigent circumstances justifying his arrest. The remaining issue was whether David's mother's consent amounted to a valid waiver of his constitutional rights. It would appear that, based on the "totality of the circumstances."[80] David did not consent to the arrest. And, in light of *Scott K.*, no amount of convoluted reasoning can justify permitting a parent to waive the Fourth Amendment rights of minor children.

Although the California Supreme Court decided not to hear the case of *David W.*, by ordering that the opinion not be published, they have effectively eliminated any impact it might have had. In effect, they have reversed the decision sub silentio and have sent a message to the California district courts of appeal that the *Scott K.* decision is not to be limited in its application.

VII. CONCLUSION

The courts seem unwilling to decide which constitutional rights, if any, may be waived by parents. This issue need to be clarified. At present, it appears that constitutional rights of mi-

78. *Supra* note 41, at 402, 595 P.2d at 109, 155 Cal. Rptr. at 675.
79. Payton v. New York, — U.S. —, 100 S. Ct. 1371 (1980).
80. *Supra* note 26.

AUTHOR'S CORRECTIONS

PRINTER'S ERRORS

nors may be waived in some circumstances when reasonable for the purpose of discipline and control. However, apparently other constitutional rights are such a fundamental part of due process that a parent will not be permitted to waive them on behalf of a minor child. Even should it be determined which rights a parent may waive for his or her minor child, the issue remains: who will decide the circumstances under which parental waiver is reasonable?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-5058

DAVID LEVELL W., a minor,
Petitioner,
v.
THE STATE OF CALIFORNIA,
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I am a member of the Bar of the United States Supreme Court and that I have on this date served a copy of the attached Supplemental Brief in Support of Petition for Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District by depositing the above in the United States Mail, postage prepaid and properly addressed to:

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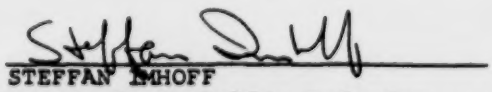
Dated this 12th day of November, 1980, at Los Angeles, California.



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